

This letter discusses the exemption from the Retailers' Occupation Tax for Farm Machinery and Equipment and Farm Chemicals. See 86 Ill. Adm. Code 130.305 and 130.1955. (This is a GIL.)

January 10, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 6, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am considering purchasing a dealership for a predator insect that targets scales on commercial and residential plants. I intend to buy the insects from an insectary in STATE and have them shipped directly to my customer. I expect to receive orders from customers in Illinois as well as surrounding states. These insects devour the scale (which is also an insect) and provide an environmentally safe way to control scale. Typical control measures require the use of pesticides, some of which are restricted use, and can only be applied by licensed applicators. The other problem with pesticides is that they are only effective for 3 days per generation, after which the scale develops a protective coating that the pesticide cannot penetrate.

My projected customer base will be farmers, landscape contractors, gardeners, and consumers. I would like your opinion on what customers I should charge sales tax (ROT). I feel that the farmers and landscape contractors would not be the final consumer; therefore they should not be liable for sales tax (assuming that they have a valid Certificate of Resale). The gardeners and consumers would be the final consumer and therefore liable for Illinois sales tax. My other basis for this is that agricultural chemicals are not subject to sales tax, and this insect is basically replacing the pesticides that a farmer or landscape contractor would purchase to control scale.

I am most interested in your opinion on this matter. If you have any questions feel free to contact me.

## DEPARTMENT'S RESPONSE:

Absent a valid exemption or exclusion, the sale of predator insects to farmers, landscape contractors, gardeners, consumers, and others in this State is subject to the Retailers' Occupation Tax. See 86 Ill. Admin. 130.101 et seq.

Neither the Farm Machinery and Equipment exemption found at 86 Ill. Admin. Code 130.305 nor the Farm Chemicals exemption found at 86 Ill. Admin. Code 130.1955 is applicable to the sale of predator insects used to control insects that damage plants. A predator insect is not farm equipment or a farm chemical as those terms are defined in the rules governing these exemptions.

Nor would the sale of predator insects to be used by the purchaser to control plant damage done by other insects consist of a sale for resale. Unless the insects themselves are being resold by the purchaser, instead of used to control plant damage done by other insects, the sale is a sale at retail for the use of the purchaser. For information on certificates of resale please see 86 Ill. Admin. Code 130.1405. For general information on drop-shipments please see 86 Ill. Admin. Code 130.225.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk